

EXHIBIT C

**PUBLIC COMMENT OF
BEAVER WATER DISTRICT
DATED MARCH 29, 2018**



March 29, 2018
Via Hand Delivery at Public Hearing in Fayetteville, Arkansas

Kelly Robinson
Arkansas Department of Environmental Quality
101E. Capitol, Suite 205
Little Rock, AR 72201

Re: APCEC Docket No. 18-001-R, NANTRAG's Proposed APCEC Regulation No. 37

Dear Ms. Robinson:

Beaver Water District (BWD) operates the drinking water treatment plant that produces most of the drinking water for northwest Arkansas. We wholesale the treated drinking water to the Cities of Bentonville, Fayetteville, Rogers, and Springdale. These four cities provide water to the residents and businesses in their respective service area and to approximately sixteen other cities and towns in northwest Arkansas. Beaver Lake is the source of the water treated by BWD and three other drinking water treatment utilities. Together, the four drinking water treatment plants on Beaver Lake produce treated drinking water for over four hundred thousand Arkansans.

It is to ensure that Beaver Lake remains a high-quality source for drinking water that BWD is making these comments at tonight's public hearing regarding the proposed Arkansas Nutrient Water Quality Trading Regulations. BWD supports the goal of the Cities of Bentonville, Fayetteville, Rogers, and Springdale, which make up the Northwest Arkansas Nutrient Trading Research and Advisory Group (NANTRAG), to develop and successfully implement an Arkansas nutrient water quality trading program. Any such program, however, must be based on regulations that guarantee the protection of Arkansas reservoirs that serve as drinking water sources.

Nutrient inputs to reservoirs can produce increases in algae and significant problems for drinking water treatment. Perhaps the most dramatic of these problems is the formation of harmful algal blooms (HABs) that can produce toxins known as cyanotoxins. The presence or potential presence of cyanotoxins in a drinking water source requires water treatment plants to perform additional specialized monitoring and to alter and manage treatment operations accordingly. Non-toxin-producing algae can also cause problems for drinking water treatment, including taste and odor issues, filter clogging, and increases in the precursors of disinfection byproducts (DBPs). DBPs are strictly regulated under the Safe Drinking Water Act.

With that background information in mind, BWD offers the following preliminary comments regarding NANTRAG's proposed Arkansas Nutrient Water Quality Trading Regulations. BWD will submit more detailed and comprehensive comments by the public comment period deadline.

BWD's primary concern is that the proposed regulation does not require that the actual, in-stream nutrient concentrations and loads be reduced or that they even be maintained at current

levels. There is a requirement in Section 2(A)(6) that applications for approval of a Nutrient Credit Generating Project must include “[e]vidence that use of the nutrient credits will not result in a net increase in pollutant loading in the relevant watershed.” This provision, however, only governs what is to be included in the application and it does not prevent the Director of the Arkansas Department of Environmental Quality (ADEQ) from approving Projects that result in increases in nutrient concentrations or loads. Instead, Section 2(I) provides that, “No Nutrient Credit Generating Project shall be approved by the Director unless the project, activity, or discharge reduction involved in the project will reduce the nutrient load *below the applicable baseline requirements.*” [Emphasis added]. Requiring that the *project, activity, or discharge reduction* reduce the nutrient load below the *applicable baseline* is very different from requiring that the *use of the nutrient credits* reduce actual nutrient concentrations and loads in the receiving stream. This is because the definition of “baseline requirements” in Section 2(I) is not specifically tied to the current, in-stream nutrient levels *or* to numeric water quality criteria (WQC) for nutrients *or* to water quality-based effluent limitations (WQBEL), except for the rare cases in Arkansas where a downstream state’s numeric WQC have been applied or where a wasteload allocation for nutrients has been performed.

Other concerns of BWD regarding the proposed Arkansas Nutrient Water Quality Trading Regulations include that:

- The regulation lacks sufficient implementation procedures. For example, the focus of the regulation is on credit generation and there is very little in the regulation regarding how the credits are to be used as offsets by National Pollutant Discharge Elimination System (NPDES) permit holders;
- The regulation does not include the same public notice, comment, and hearing rights that apply to NPDES permitting decisions (*see, e.g.*, Arkansas Pollution Control and Ecology Commission (APCEC) Regulation 8.207, 8.208, and 8.209);
- The standards for the decision of the ADEQ Director to approve or disapprove a Nutrient Credit Generating Project are scanty and insufficient to adequately protect surface water quality and Arkansas reservoirs that serve as drinking water sources;
- There is no required-minimum trade ratio to account for the inherent uncertainty and risk involved with nutrient trading and there is no requirement to apply a trade ratio that ensures that the amount of nutrient reduction resulting from the trade has the same effect as the nutrient reduction that would be required without the trade;
- Applications can be made to use as credits non-point source pollution reduction activities that already have been implemented;
- The regulation does not include provisions regarding fees to cover the costs to ADEQ to staff and implement an entirely new regulatory program; and
- The regulation limits ADEQ’s enforcement authority in ways that are contrary to the delegation of the NPDES program to ADEQ by the United States Environmental Protection Agency.

Thank you for this opportunity to provide BWD’s initial comments. We are hopeful that the public comment process will ultimately result in a revised nutrient water quality trading

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regulation that contains clear terms and procedures, that protects drinking water reservoirs, and that can be successfully utilized by wastewater dischargers to reduce nutrient pollution.

Sincerely,



Colene Gaston
Staff Attorney

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